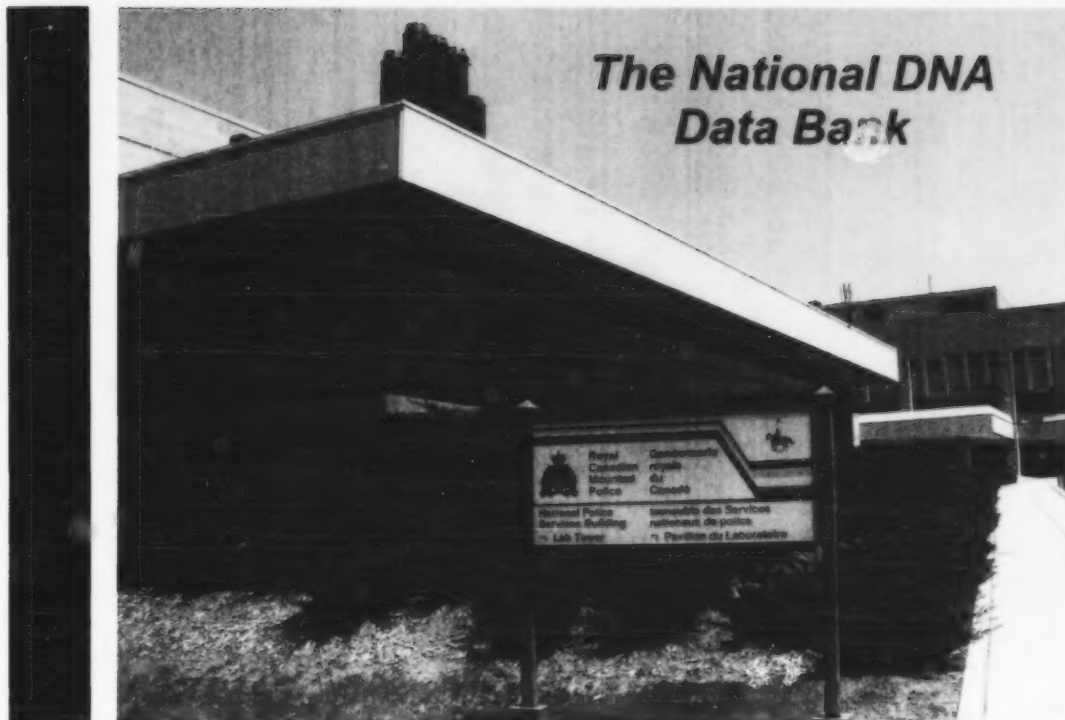


National DNA Data Bank Advisory Committee Annual Report 2002-2003

Richard A. Bergman, Chairperson
Dr. George R. Carmody, Vice-Chairperson



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www.rcmp-grc.gc.ca/dna_ac/index_e.htm

The website of the National DNA Data Bank of Canada may be found at:

www.nddb-bndb.org

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2003-06-03

Commissioner Giuliano Zaccardelli
Royal Canadian Mounted Police
1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2



Dear Commissioner Zaccardelli:

Please find attached the Record of Decisions from the National DNA Data Bank Advisory Committee meeting which was held February 27-28, 2003.

Presentation highlights by Department of Justice, Solicitor General Canada, Consulting & Audit Canada, and Ontario Ministry of the Attorney General were well received and greatly appreciated by the Committee.

The Committee was pleased to review the final report of the Review of the National DNA Data Bank and Biology Casework Analysis Agreements prepared for the Solicitor General of Canada by Consulting and Audit Canada. Areas of concern raised by the review include the fact that Canada does not maintain an accurate national court conviction statistics system and thus it is difficult to establish a true base against which to measure the success of the DNA Data Bank. Of continuing concern is the submission rate of convicted offender profiles to the Data Bank, i.e., only 50% for Primary Offences and 5% for Secondary Offences. The Committee is continuing its partnership with the National Judicial Institute in order to ensure that National Data Bank and Force legal representatives (Dr. Ron Fourney and Mr. David Bird) are invited to participate in all National Judicial Institute Training sessions. It is the Committee's opinion that submission rates, both primary and secondary, will increase in parallel with the increased understanding of the National DNA Data Bank, Identification Act and its potential by the judiciary. The Committee is also pleased with the timing of the Consulting and Audit Canada Report since it establishes a valuable body of information on a new program against which future evaluations can be measured.

In response to a Public Consultation Process on DNA issues carried out in 2002 as well as input from the Uniform Law Conference and the RCMP, the Department of Justice has indicated that Cabinet will be asked to consider legislative proposals and the drafting of a bill in the near future. The Committee is pleased to note that the Department of Justice is moving forward to resolve a number of DNA related issues through legislation now rather than after the five-year review.

The Ontario Ministry of the Attorney General addressed the Committee in relation to their implementation strategy, litigation strategy and an overview of possible amendments to the Data Bank Legislation. The Committee was impressed with the progressive nature of the Ontario program.

Dr. Fourney's report on the operation of the Data Bank continues to be positive but its present functioning at less than its intended capacity is clearly a continuing concern. The Committee has been briefed and is in agreement with the possible use of Data Bank operations to process scenes of crime samples in an automated fashion, i.e., Break & Enters, etc. in order to assist in building the size of the Scenes of Crime Index. Any further integration into actual casework would be of concern to the Committee. We will follow this issue closely.

In looking ahead, the Committee is aware of the growing interest from many groups that a National Missing Persons and Mass disaster DNA Data Bank be developed in Canada. The Committee will also follow this issue closely as we move toward the five-year review.

The Committee would like to thank Dr. Ron Fourney (O i/c DNA Data Bank) and Mr. David Bird (Legal Services) for their continuing training activity in association with the National Judicial Institute and other Judicial Conferences. It is the Committee's opinion that their participation in these training conferences is extremely important to the ultimate success of the Data Bank.

Sincerely,



Richard A. Bergman,
Chairperson

c.c. A/Commr National Police Services
A/Commr Forensic Laboratory Services
Chairperson, Forensic Laboratory Services Advisory Group



September 3, 2002

Mr. Richard A. Bergman
Chairperson
National DNA Data Bank Advisory Committee
NPS Building
1200 Vanier Parkway
Ottawa, Ontario



Dear Mr. Bergman:

I am writing to offer my congratulations to your Committee for the very professional Annual Report of the National DNA Data Bank Advisory Committee for 2001-2002.

The Report provided me with an overview of the work of the National DNA Data Bank over the past year. The ongoing dedication of your Committee to provide this office with advice on the implementation and work of the Data Bank has significantly contributed to the success of the DNA Data Bank, and it is much appreciated.

I will now address the five recommendations in the Annual Report.

Recommendation 1 - Amendments to Legislation

Draft amendments to the DNA Identification Regulations have been finalized to allow for the Data Bank to reject a convicted offender sample that cannot be confirmed due to lack of fingerprints or the ability to read the fingerprints collected. The regulations also allow for secondary identification data to be provided to the Data Bank if fingerprints cannot be provided, due to unique circumstances such as missing hands or lack of dermal fingerprint layers because of medical reasons.

The draft regulations were approved by my office in early July 2002, and forwarded to the Solicitor General for further consultation, publication in the Canada Gazette, and for acceptance by the Privy Council Office. I am hopeful that this will be enacted by October 2002.

Recommendation 2 - Disposition of Convicted Offender Samples

A position paper was prepared on the non-designated offence issue by the RCMP, and forwarded to the Department of the Solicitor General in order to develop a common solution to the problem. Subsequently, the Department of the Solicitor General in order to develop a common solution to the problem. Subsequently, the Department requested that a legal opinion be obtained which will address questions related to whether the Commissioner must accept all sample kits that are based on DNA Data Bank orders that are issued by competent Canadian courts. The legal opinion is expected before the Fall of 2002 and, shortly thereafter, we expect a response from the Department of the Solicitor General.

Recommendation 3 - Data Bank Financing

Solicitor General Canada, with whom the responsibility lies, has engaged Consulting and Audit Canada to complete an evaluation of the Biology Casework Analysis Agreements and the National DNA Data Bank, with a focus on the federal/provincial/territorial cost-sharing agreements. This evaluation is scheduled to be completed by October 15, 2002. A series of financing alternatives is expected to be evaluated, and this evaluation will be

performed in partnership with affected central agencies, as well as the RCMP. **The alternative financing proposals will then be discussed with provincial and territorial partners.**

Recommendation 4 - Effectiveness of International Agreements

In order for DNA information from the National DNA Data Bank to be shared with foreign police agencies, an international agreement must be in place in accordance with the DNA Identification Act. The issue of Canadian DNA data being shared with other countries, as well as the impact of potential privacy and security concerns have been a source of significant discussion. To safeguard privacy and security of DNA Data Bank data, international agreements were proposed. Our first effort was directed towards a bilateral agreement between Interpol which would allow Canadian law enforcement personnel, through the National DNA Data Bank, the ability to share data with 178 signing countries. Another agreement was proposed which would allow Canadian law enforcement actively involved with a criminal investigation to exchange DNA data through a RCMP/FBI bilateral exchange.

In April 2002, the Solicitor General approved the Interpol Agreement and, in principle, the RCMP/FBI Agreement. Presently, the RCMP/FBI agreement draft is being reviewed by the United States Attorney General.

An update regarding the FBI agreement will be undertaken. I would urge the Committee to continue to monitor and report on the international agreement requests.

Recommendation 5 - Monitoring the Flow of Convicted Offender Samples

I have requested the Assistant Commissioner of Forensic Laboratory Services (FLS) prepare routine updates on this matter, and inform Chief of National Police Services (NPS), of data relating to samples being received by the Data Bank for inclusion in the Convicted Offender Index.

I agree that there must be continual monitoring on behalf of the Data Bank and NPS to ensure the potential capacity of the DNA Data Bank is realized. This will require a significant increase in the number of convicted offender samples being entered. I have also requested that the Chief of NPS keep me informed on this matter.

In addition, I have directed the Assistant Commissioner of FLS make available to provincial and territorial authorities statistics on the samples and profiles that are received by the Data Bank. Furthermore, I have encouraged the Assistant Commissioner of FLS to involve our personnel in promoting greater use of the Data Bank with our partners within the Canadian criminal justice community.

I have taken the liberty of providing a copy of this letter to the Minister of Justice and Attorney General of Canada and the Solicitor General of Canada, given their interest in the DNA Data Bank and the implications of your recommendations and this response.

I look forward to the Committee's ongoing advice.

Sincerely,

G. Zaccardelli





**RICHARD A. BERGMAN, CHAIRPERSON
REPRESENTATIVE OF THE POLICE COMMUNITY**

Following 35 years of distinguished service with the RCMP, Richard Bergman retired from active police service in 1997. During his career, he served in Manitoba, Saskatchewan, British Columbia, Ontario and Atlantic Canada. Among his many significant career appointments, he served as Commanding Officer of the RCMP in Manitoba, the Director, RCMP Forensic Laboratories, Deputy Commissioner, National Police Services, and Deputy Commissioner, Atlantic Region. It was under his direction, as the Director of Forensic

Laboratories, that the RCMP initiated their DNA program. Mr. Bergman graduated from the University of Saskatchewan in 1972 with a B.Sc. (Honours) and a M.Sc (Biochemistry) in 1974. He is also a graduate of the Career Assignment Program, Government of Canada. Mr. Bergman is a member of a number of professional associations, and the recipient of a number of several distinguished awards. He has published and co-authored a number of publications relating to legal, police and science issues.

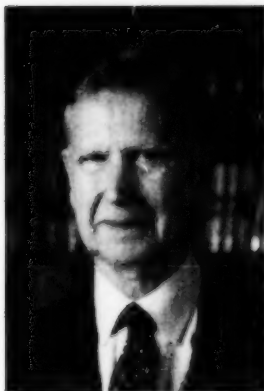
**DR. GEORGE R. CARMODY, VICE-CHAIRPERSON
POPULATION BIOLOGY SPECIALIST**

Beginning an eminent career in academia upon graduation from Columbia University (Chemistry), Dr. Carmody completed his Ph.D. in Zoology from the same institution. Subsequently, he was a postdoctoral fellow in population biology at the University of Chicago, a senior fellow (genetics) at the University of Nottingham, and a visiting researcher and professor at the National Institute of Environmental Health Sciences at the University of Hawaii and the University of Texas. Since joining Carleton University in 1969 and becoming a Canadian citizen, Dr. Carmody has been an Assistant Professor, Associate Dean of Science, Chair, Integrated Science Studies, and is currently an Associate Professor of Biology. Dr. Carmody is a member of a number of professional societies, has participated in the publication of several dozen scientific publications, testified in numerous DNA related court cases in Canada, and during his distinguished career, has presented briefings at numerous lectures and seminars around the world. He is a member of the N.Y. State DNA Subcommittee and the U.S Department of Justice Kinship and Data Analysis Panel. Dr. Carmody is recognized in the scientific and legal communities as an expert in population genetics and statistics as applied to forensic applications.



DR. FREDERICK R. BIEBER
BIO-MEDICAL ETHICS SPECIALIST

Born in Regina, Saskatchewan, and now a United States citizen, Dr. Bieber has a B.A. (State University of New York), a M.Sc. (University of Rochester), and a Ph.D. in Human Genetics (Medical College of Virginia). Dr. Bieber also completed postdoctoral fellowships in Medical Genetics at the Massachusetts General Hospital and Harvard Medical School and in Pathology at Brigham and Womens Hospital in Boston. He is licensed and certified with a number of American genetics and genetics-related Boards. Dr. Bieber holds a number of academic appointments and is currently an Associate Professor of Pathology at Harvard Medical School, a medical geneticist at Brigham and Womens Hospital, a consultant in Pediatrics at Massachusetts General Hospital, and a consultant in Pathology at Childrens Hospital in Boston. Dr. Bieber holds a number of professional positions such as being a member of the DNA Advisory Board, Federal Bureau of Investigation. He is a recipient of numerous academic and public service awards and honors for his academic achievements. Most recently Dr. Bieber was awarded a Distinguished Service Award by the Massachusetts District Attorneys Association for his many contributions to public safety throughout the Commonwealth over the past ten years. Dr. Bieber is the author or co-author of over one hundred publications and has testified in numerous DNA cases throughout the United States.



THE HONOURABLE PETER CORY, C.C, C.D, Q.C
REPRESENTING LAW

Career History: Pilot in the Royal Canadian Air Force. Served overseas with 6th Bomber Group. Called to the Ontario Bar in 1950. Remained a member of reserve army until 1952. Appointed QC, 1963. Practised law with Holden, Murdoch. Elected benchler of the Law Society of Upper Canada, 1971. Past Chairman of the Ontario Civil Liberties Section of the Canadian Bar Association. Past President of the County of York Law Association. Past National Director of the Canadian Bar Association. Past President of the Advocates' Society.

Appointed to the Supreme Court of Ontario High Court, 1974.

Appointed to the Ontario Court of Appeal, 1981. Appointed to the Supreme Court of Canada, 1 February 1989. Retired on 1 June 1999. Honorary Colonel, 426(T) Training Squadron. Chair of Military Judges' Compensation Committee. Commissioner for the Province of Manitoba Inquiring into the Wrongful Conviction for Murder and Compensation Payable to Thomas Sophonow. Commissioner for the Province of Ontario on Role of Paralegals. Appointed by the English and Irish Governments to review six murder cases selected by the parties of the Peace Accord to determine whether any or all of them should be subject of a public inquiry. Member of DNA Databank Advisory Committee.



**GISELE COTE-HARPER, O.C., Q.C.
HUMAN RIGHTS SPECIALIST**

Gisèle Côté-Harper graduated from Laval University (B.A.(és arts); LL.L.) and Harvard University (LL.M.). She is currently a Barrister and a Professor at the Faculty of Law, Université Laval, specializing in Criminal Law and Human Rights.

From 1978 to 1993, Professor Côté-Harper was successively appointed as a member of the Canadian Human Rights Tribunal, the Quebec Human Rights Commission and the RCMP Public Complaints Commission. She has also served as an independant expert on the U.N. Human Rights Committee.

Gisèle Côté-Harper has acted as co-rapporteur on the creation of an international institute for the development of human rights and of democratic institutions. Following this report, she was, for six years, the Founding Chairperson of the Board of Directors of the International Centre for Human Rights and Democratic Development (Rights and Democracy). She was later appointed to the International Commission on Intervention and State Sovereignty. The Commission report entitled *The Responsibility to Protect*, was launched at the United Nations in December 2001.

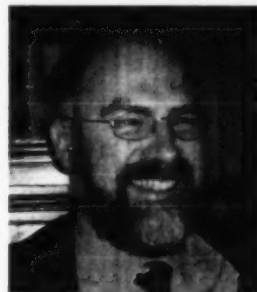
Professor Côté-Harper was appointed Queen's Counsel in 1987. In 1995, the United Nations Association of Canada recognized her contribution as a legal expert on national and international human rights issues by awarding her the Lester B. Pearson Medal. She was named Officer of the Order of Canada in 1997. In 1998, she was awarded the Quebec Bar Medal and, in 2002, the Golden Jubilee Medal.

A distinguished author, Professor Côté-Harper now serves as Vice President of the Board of Directors of the Pearson Peacekeeping Centre as well as a member of the General Assembly of the Inter-American Institute for Human Rights.

**DR. WILLIAM S. DAVIDSON
MEDICAL GENETICS SPECIALIST**

After graduating with a degree in Biochemistry in Edinburgh, Scotland, Dr. Davidson completed his doctorate at Queens University in Kingston, Ontario. Following various fellowships and visiting professor appointments in the United States, he settled at Memorial University, until 1999, where he advanced from assistant professor to acting Dean of Science. Thereafter, he was selected for his current appointment as the Dean of Science at Simon Fraser University, Burnaby, British Columbia.

Dr. Davidson has participated in and authored a significant number of research papers and articles, and is a member of many influential national and international medical genetics-related groups and institutions. He supervised a number of graduate students at Memorial University, and continues to pursue this endeavor at Simon Fraser University. Dr. Davidson has lectured widely throughout Canada and the international scientific community.



JULIEN DELISLE
OFFICE OF THE PRIVACY COMMISSIONER OF CANADA

Julien Delisle, Executive Director at the Office of the Privacy Commissioner of Canada, has been, since 1991, responsible for the development of policies and delivery of programs mandated by the *Privacy Act*, and since January 2001, the *Personal Information Protection and Electronic Documents Act*. Prior to his appointment as Executive Director, Mr. Delisle held various positions with the Canadian Human Rights Commission and the New Brunswick Human Rights Commission. Mr. Delisle is a professional conciliator and mediator and he is a recognized expert in the fields of Privacy, Access to Information, and Human Rights. He is a graduate of St-Thomas University in Fredericton and he attended graduate school at the University of New Brunswick.



DR. RON FOURNEY
OFFICER IN CHARGE, NATIONAL DNA DATA BANK

Dr. Fourney received his Ph.D. in Biochemistry and conducted post-doctoral studies in molecular basis of cancer predisposition as a National Cancer Institute of Canada and Alberta Cancer Board Research Fellow. He joined the RCMP as a civilian member and molecular genetics specialist in 1988. Dr. Fourney is a founding member of the RCMP DNA program and has been instrumental in the development and implementation of forensic DNA typing for Canada. He represents the RCMP on numerous national and international committees tasked with the development of DNA identification methods for forensic human identification. He has also played key roles in numerous investigations including organization and management of the SR111 DNA Typing task force for the DNA identification of the victims of the Swissair Flight 111 aircraft disaster. He has continued his interest in enhancing forensic DNA technology and has specialized in fluorescent Short Tandem Repeat detection analysis, robotic automation and comprehensive strategic planning for DNA data banks. Dr. Fourney is closely involved with the privacy and security issues of DNA human identification and was a key content expert in the design of the Canadian DNA Data Bank Legislation. Currently, Dr. Fourney is Officer in Charge of Canada's National DNA Data Bank and manages a research team which explores new DNA technologies. He is a member of the editorial boards for *The Journal of BioTechniques* and *The Journal of Forensic Sciences*, advisor to the *International Journal of Legal Medicine* and has a cross appointment as an adjunct professor in the Department of Biology, Carleton University (Ottawa-Carleton Institute of Biology).

The National DNA Data Bank Advisory Committee Mandate

The Committee was established pursuant to Section 12 of the *DNA Identification Act* through the annexed *Data Bank Advisory Committee Regulations*. The Regulations were enacted on May 8, 2000, several months before the proclamation of the *DNA Identification Act* and the *DNA Identification Regulations*, which occurred on June 30, 2000.

The establishment of an Advisory Committee was recommended by the *Standing Senate Committee on Legal and Constitutional Affairs* in its Sixteenth Report (December 8, 1998) wherein the need for an independent advisory committee was deemed necessary to contribute to the effective and efficient operation of the Data Bank by providing expert advice to the RCMP Commissioner.

Appointed by the Solicitor General of Canada, the Committee functions as an independent body to assist the Commissioner in ensuring that the Data Bank operates in compliance with the legislation and regulations. In addition, it reviews the methods used to issue notifications, transmit information and convey and store samples. Other functions of interest include sampling processes and sample integrity, scientific integrity, genetic privacy, analytical procedures, international information sharing protocols, sample re-analysis and the DNA profile format itself.



The National DNA Data Bank Advisory Committee held three meetings during the fiscal year.

First Meeting: July 8-9, 2002

The first meeting was held in Ottawa during which the Advisory Committed Members also made an afternoon presentation at the *2002 National Criminal Law Program* of the *Federation of Law Societies of Canada*, on the DNA data bank and the Advisory Committees' role with respect to it.

A presentation was made by RCMP Assistant Commissioner of the Information and Identification and Acting Chief National Police Services (CNPS), on the Data Bank funding and the Federal/Provincial/Territorial Biology Case Work Agreements. The reasons for the underutilization of the Data Bank was discussed with the Committee. The Committee was advised that the Data Bank was running at much less than its expected sample processing capacity, due to lack of convicted offender samples. The Committee recommended national statistics should be collected to identify the number and types of designated offence convictions that occur in each province and the number of convicted offender DNA data bank collection orders that are issues with respect to each type of designated offence. The Committee also discussed the fact that the majority of Break and Enter cases are not being processed and entered into the Crime Scene Index (CSI). The Committee was advised that it appears that a low priority is placed on these crimes by both police agencies and laboratories which are back logged with more serious crimes of violence. Based on the considerable potential linkage between Break and Enters and crimes of violence as reported by Data Banks in Florida and England, the Committee recommended the development of a process to increase the processing of Break & Entry cases to the CSI.



Representatives of Consulting and Audit Canada and (CAC) the Solicitor General of Canada briefed the Committee on the Evaluation Framework established for Biology Casework Analysis (BCA) and the National DNA Data Bank (DB) with focus on the Federal/Provincial/Territorial cost sharing agreements. The Committee was advised that a study by CAC is being undertaken as a preliminary step to the renegotiation of the agreements and the evaluation will also consider the funding impact on the Data Bank.

A presentation was made by Department of Justice (DOJ) representatives, who addressed three issues:

1. Some provinces are not producing as many DNA orders as was anticipated. A research study will examine the number of convictions for primary designated offences by jurisdiction in order to determine if there is in fact a disparity between the number of DNA orders requested for primary designated offences and the total number of convictions for the same offences in each jurisdiction.
2. The Committee was updated on four recent court rulings related to Section 487.055 of the *Criminal Code* (the retroactive scheme in the DNA Data Bank legislation).
3. A "*DNA Data Bank Consultation Paper*" to consider possible legislative amendments was introduced which included the legislative history of DNA and the rationale for widespread consultation with other departments, stakeholders and interested Canadians. Feedback is expected to the consultation paper by November 1, 2002, with the results being made available early in 2003.

The Committee was briefed by a representative from the National Judicial Institute (NJI), on its three major programs: 1) judicial education and substantive law, 2) skills training and 3) social context issues. The NJI was examining the development of a DNA module that can be delivered by personal presentation, via internet, CD, distance learning and other means. Dr. Ron Fourney will represent the Advisory Committee on the planning committee for the development and implementation of the proposed DNA training/communication module.



Second Meeting: November 28-29, 2002

The second meeting of the year was held at Diamond University Centre, Simon Fraser University, Burnaby B.C. and Morris J. Wosk Centre for Dialogue. Simon Fraser University hosted the meetings and arrangements were made by committee member Dr. William Davidson, Dean of Science, Simon Fraser University. The purpose of the meeting was to examine the Data Bank Legislation, funding of the NDDB, and some of the legal questions that have arisen.



The Committee was provided with the November 25, 2002 DNA Data Bank Update Report which highlighted the increased number of matches (457 Crime Scene to Convicted Offender) in the two and a half years of operation. The Committee continues to be concerned that the number of samples from Convicted Offenders submitted to the National DNA Data Bank (NDDB) continues to average about 30% capacity based on predictions made on the assessment of primary and secondary offences annually. In addition the Committee recommended that a clear direction be developed on how to deal with the

182 non-designated samples that the NDDB has received since it has opened. The Committee was advised that an RCMP discussion paper has been under review by Sol Gen of Canada and the Department of Justice since June 2002 for the purpose of seeking the best solution to resolving the disposition of these samples that have been collected and forwarded to the data bank but remain unprocessed.

A brief overview of the Sample Tracking and Control System (STaCS) was presented by the Data Bank and the Committee was advised that the National Judicial Institute has asked the Data Bank to participate in a judges workshop on DNA in March 2003 in Quebec with a large audience representing many levels of the judiciary. The March workshop would be developed from the best practices derived from the initial test workshop presented to a smaller number of judges in Newfoundland during October 2002.



A presentation was made by Department of Justice (DOJ) representatives, who addressed three issues:

1. The DOJ public consultation regarding the present DNA Data Bank legislation ended November 1, 2002.



The consultation document provided background on the legislation and posed five questions dealing with the legislation which addressed seven major concerns identified by the provinces at various meetings over the last year. One question related to the possibility of expanding the scope of the legislation's retroactive scheme. Another involved the possible expansion of the list of designated offences. The results and comments provided by the provinces were to be considered during the development of options for Cabinet's consideration.

2. A copy of the Survey of Legal Issues Pertaining to the Implementation of the *DNA Identification Act* as of August 31, 2002 was presented to the Committee. This survey, which built upon a previous report tabled in the House of Commons in October of 2001, examined the case law that has emerged in recent months.

3. Since June 30, 2000, the National DNA Data Bank has received 182 DNA Data Bank Orders that are not "designated" offences (i.e., where it appears that a judge was without any statutory authority to make an Order). The Data Bank has not processed these samples. The DOJ is aware of the RCMP Commissioner's desire for statutory authority to deal with these samples and any future samples. The DOJ is aware of the RCMP Commissioner's desire for statutory authority to deal with these samples and any future samples.

A representative of the British Columbia Ministry of the Attorney General and the Chief of Police, Victoria, B.C. updated the Committee on the British Columbia submission to the Department of Justice response to their sponsored DNA Data Bank consultation request. The Committee was advised that the submission was endorsed by the B.C. Association of Chiefs of Police. British Columbia is a strong supporter of the National DNA Data Bank and believes that inclusion of convicted offenders in the Data Bank will act as a strong deterrent to future criminal behavior. They are also aware of the low



DNA convicted offender sample order rate following conviction, and suggest that given the genetic and privacy protection implemented by the Data Bank that consideration could be given to amending the legislation so that a Primary Offence Order is automatic unless there is an order to the contrary or alternatively, introduce provisions to allow for an application from the Crown within 7 or 30 days of sentence imposition.

A Video Conference followed with representatives of Solicitor General Canada and Consulting and Audit Canada on the preliminary findings of the Review of the National DNA Data Bank and Biological Casework Analysis Agreements. The Committee was



advised that the preliminary report indicated that the operations and management of the Data Bank was very efficient.

Key Findings of the report were:

- Funding of the NDDDB should be de-linked from biology casework operations;
- If cost sharing must continue, the contract provinces would like to see their share of the costing formula reduced and the non-contract Provinces would like to see a higher contribution from the federal Government. The administrative burden and lack of incentives for greater efficiency were noted as problems with the existing agreements;
- Statistics on the number of biological cases compared to designated offences suggest that very few crime scenes appear to produce biological evidence;
- Capacity restraints exist within the RCMP Forensic Laboratories. The CSI is under-populated. A review of the funding level for the RCMP Laboratories is required;
- If charges for biological casework must continue, charging should not be based on a fee-for-service basis. Downloading of costs directly to police forces should not occur as it may inhibit the submission of crime scene evidence for biological analysis.
- The COI is under-populated due to limited court orders. No direct connection was noted between under-population and the charging mechanism. Some Judges appear reluctant and are not making the orders as expected. Many prosecutors, unfortunately forget to request data bank orders following a conviction. Judges were not consulted to better understand their position and reasoning for the lack of orders.

Following the briefing, the Committee discussed a number of possible factors contributing to the under utilization of the Data Bank. While judicial reluctance is suggested in the CAC study, the Committee was concerned that input was not obtained directly from the judiciary due to time restrictions. A Manitoba survey revealed that 70% to 80% of judges would comply if asked to make Orders following convictions for designated offences. The Committee recommended that judicial input should be obtained prior to reaching any conclusions.

The Committee questioned the statement which suggested that only 1% of designated offences will produce samples of sufficient quality for DNA analysis since studies conducted by the Forensic Science Service (FSS) in the United Kingdom, which examined over 800,000 events, revealed a 60% - 70% yield of biological samples. Studies conducted in the United States produced similar results. The Committee is of the opinion that the 1% figure is extremely low and is perhaps reflective of a lower priority being placed upon Break and Enters at a time when police resources are limited and more focused on serious crimes of violence. At present, a great many Break and Enters are simply not investigated in Canada. The Committee's opinion is based on American and British reports which suggests that many violent and sexual offenders often resort to Break and Enters during their criminal career and that DNA evidence obtained from such investigations ultimately leads to the solution of serious crimes of violence committed by the same offenders.

The Committee discussed the funding arrangements developed in 1998 between the provinces, territories and the federal Government to support the National DNA Data Bank at a time when the Crown was operating under severe fiscal restraints. The arrangement introduced a charge to Contract Provinces for processing biological evidence for DNA analysis in RCMP Forensic Laboratories. All other categories of physical evidence continued to be processed and analysed on a "no charge" basis as part of the federally funded RCMP National Police Service. The Committee is of the opinion that this arrangement is fundamentally flawed by design since it introduces a fiscal disincentive to the processing of biological casework. It is the Committee's view that all physical evidence submitted to the Forensic Laboratories should be subject to a uniform policy, either charge or no charge. The Committee agrees with the CAC conclusion that the charge for biological casework should be de-linked from the operational costs of the National DNA Data Bank.

Third Meeting: Feb. 27-28, 2003

The Committee was provided with DNA Data Bank Update Report as of February 27-28, 2003. The Committee reiterated its concern that the number of Convicted Offender samples submitted to the National DNA Data Bank (NDDB) continues to average about 30% capacity. In spite of efforts to increase awareness of the DNA Identification Act and the

operations of the Data Bank amongst the judiciary and Crown prosecutors, the National DNA Data Bank still remains an under utilized resource. Although the under population of the COI is noted from in all jurisdictions across Canada, even Ontario which contributes over 50% of the convicted offender samples, is probably realizing only half of the potential sample entries. Efforts to increase awareness have been carried out with website information, personal contact, conferences and/or workshop presentations.



The Data Bank reported that to date, the Interpol agreement between 181 countries has resulted in 76 search requests with two hits. Nine search requests have been sent out with no matches. The Combined DNA Index System (CODIS) is presently being upgraded across the country and one of its highlights is a 60% increased search speed. The Data Bank reported that future STaCS prospects include highlights such as a proficiency test module, analyst training module, Break and Enter module, robot recipe editor and mass disaster processing. It should be noted that these modules are being developed in full compliance with privacy and security considerations. Processing samples to identify victims from mass disasters or samples from Break and Enters require different privacy and security considerations with respect to sample identification. Magnetic bead DNA extraction continues to be investigated and studied for projects involving large number of crime scene samples to deal with mass processing in less time. This technology will expedite the processing of challenging samples using a mass robotic analytical approach. In addition to magnetic bead extraction, real time PCR (RT-PCR) is being reviewed and validated as a replacement human DNA quantitation procedure. This work will be used for potential mass disaster victim identification and also has direct application to operational casework analysis enabling a faster and more sensitive protocol to establish amplifiable amounts of human DNA present in forensically relevant exhibits.

A presentation was made by Department of Justice (DOJ) representatives, who:

1. reviewed the responses to the Justice Department's public consultation on the DNA Data Bank legislation. In general the submissions supported:

- the addition of certain offences to the lists of designation offences;
- the inclusion in the DNA data bank scheme of persons found not criminally responsible by reason of mental disorder;
- the expansion of the retroactive scheme to cover historical sexual offences;
- amendments to the Criminal Code that would deal with certain procedural issues;
- dealing with the issue of section 487.053 of the *Criminal Code*.

2. Cabinet will be asked to consider legislative proposals to address the issues identified by the RCMP, Uniform Law Conference (ULC) and public consultations of 2002.

3. The creation of a Missing Persons Index, may be explored in the course of the



Parliamentary review of the legislation which is to take place before July 2005. Future work includes Federal/Provincial/Territorial consultations regarding further legislation, implementation of data bank legislation, training for participants in the DNA data bank scheme (e.g., police, prosecutors and judges), revised prosecution guidelines, ensuring maximum use of the DNA data bank legislation and the Parliamentary review.

Representatives of Consulting and Audit Canada and the Solicitor General of Canada reviewed the final report of the National DNA Data Bank and Biology Casework Analysis Agreements. The Committee was advised that the numbers reveal a very low percentage of biology analysis across the country as a whole. Low numbers show very few crime scenes yielding forensic biology evidence. Approximately 644,000 primary



and secondary crimes are committed yearly in Canada. Of these, only 5,600 biology Cases are analysed ultimately resulting in 3,500 profiles being entered into the DNA data bank.

Representatives from the Ontario Ministry of the Attorney General (MAG) addressed the Committee on Ontario's implementation strategy, litigation strategy and an overview of possible amendments to the data bank legislation. Prior to the implementation of the DNA data bank in June 2000, the MAG provided written information to all Crowns in Ontario regarding the data bank legislation. Ontario also established a DNA data bank retroactive team to work with the police community in obtaining retroactive orders. Crown schools and Crown conferences were used to promote training. An internal legal research site was established on the Ontario Crown's internal website regarding various aspects of the DNA data bank. Prior to implementation, discussions were held with the judiciary to try to resolve outstanding issues such as the location of sampling. There is a continuing concern regarding the accuracy of statistics concerning the percentage of primary orders being made in Ontario. Ontario is currently examining their statistics back to June 2000 and hopes to break down data to include information on primary and secondary offences, offence types, and data bank orders. It is anticipated that this review will provide information regarding the kinds of cases in which orders are and are not being made. This information will be used to identify and address any problems or inefficiencies and to further develop policies.

MAG has been recommending amendments to the DNA legislation. Ontario's response to the Federal consultation paper on the DNA Identification Act and Criminal Code was divided into two parts; short-term and long-term amendments requiring further consultations with provinces and stakeholders.

To summarize, Ontario supports and recommends changes to:

- the list of designated offences in the Criminal Code;
- amendments to the Criminal Code allowing DNA entered into the data bank taken from individuals found not criminally responsible by reason of mental disorder;
- expansion of the retroactive aspect of the DNA data bank legislation; and
- amendments to the Criminal Code to address certain procedural issues. The potential for a National Missing Persons data bank was discussed with the MAG representatives in support of identification of remains in tragedies.



The RCMP Assistant Commissioner for the Forensic Laboratory Services (FLS), presented an overview of FLS from the April 2000 Auditor General's Report Recommendations to the present, and where FLS is going in the future.



The Committee has supported every opportunity over the past year to communicate, educate and present the objectives of the National DNA Data Bank as proclaimed in Statute 37 DNA Identification Act. Over the past year members of the committee have enthusiastically provided information to a wide audience. Although there were many varied venues, the principal focus was given to the legal and judicial communities both nationally and internationally to emphasize the power of the technology to solve crimes through the support of law enforcement investigations and to safeguard justice while respecting the privacy and the security of DNA information.

The highlights of presentations included a review of the principles of the DNA Identification Act and the process used on a daily basis by the National DNA Data Bank as a model for integrated policing and justice presented at the Police Research Conference. In July of 2002 the role of the data bank for intelligence based policing and the administration of justice was presented to the 2002 National Criminal Law Program of the Federation of Law Societies of Canada. Considerable effort was directed toward the judiciary in highlighting the importance of increasing the number of DNA Sample Orders in order to populate the convicted Offender Index. Towards this specific goal the National DNA Data Bank Committee supported the development of DNA Data Bank training module with the National Judicial Institute. This module was presented in Corner Brook Newfoundland and Quebec City and was considered highly successful. The intent of the Canadian legislation and the processes of the National DNA Data Bank were highlighted in an invited plenary lecture series presented at the International Society for the Reform of Criminal Law, Charleston, South Carolina in December 2001.

The importance of communication and the role that the DNA Data Bank plays in Canadian safety as well as the support for international investigation and integrated policing and justice cannot be understated. From a national level, more communication and education will promote a better understanding within the Canadian public as well as the Canadian legal and judicial communities. It is anticipated that more directed presentations will increase the numbers of samples ordered for the Convicted Offender Index, and escalate the potential matches between crime scene and convicted offenders while contributing to the enhanced safety of all Canadians.



Content Experts and Guest Speakers to the National DNA Data Bank Advisory Committee

April 1, 2002 to March 31, 2003

Mr. Richard Bergman, Chairperson, along with the Members of the National DNA Data Bank Advisory Committee, would like to extend heartfelt thanks and gratitude to the following persons and Departments who contributed an enormous wealth of information and assistance in support of the NDDB AC mandate:

Dr. Gail Anderson	Forensic Entomologist, Simon Fraser University
Dr. Daniel Antonowicz	Research Officer, Research and Statistics Division, Justice Canada
Chief Paul Battershill	Victoria Police Department, British Columbia
David Bird	Legal Counsel, RCMP Legal Services
Joseph L. Buckle	Assistant Commissioner Forensic Laboratory Services, RCMP
Thomas E. Burns	Crown Counsel, Ministry of Attorney General, Criminal Justice Branch, Vancouver, B.C.
Gordon Clifford	Consultant, Consulting and Audit Canada
Janet Gallin	Research Counsel, Crown Law Office, Criminal Law Division, Ontario Ministry of the Attorney General
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Helen Hopfauf	Policy Analyst, Policy and Law Enforcement Division, Solicitor General Canada
Ted Lukaszewski	Oi/c Policy, Planning and Evaluation, RCMP Forensic Laboratory Services Ottawa
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James O'Reilly	Associate Executive Director, National Judicial Institute
Karen Sallows	Director, Policy and Law Enforcement Division, Solicitor General Canada
Mr. Peter Samija	Acting General Manager, Forensic Laboratory Services - Vancouver
Genevieve Sirois	Policy and Law Enforcement Division, Solicitor General Canada
Rod Smith	Assistant Commissioner Information & Identification Services and Acting Chief National Police Services
Dr. Michael Stevenson	President, Simon Fraser University, Burnaby, B.C.
Rebecca Thompson	Policy Analyst, Policy and Law Enforcement Division, Solicitor General Canada
Greg Yost	Counsel, Criminal Law Policy Section, Department of Justice Canada
Michael Zigayer	Senior Counsel, Criminal Law Policy Section, Justice Canada

Statistics as of March 31, 2003

The following table provides the operational performance statistics for the Data Bank from the official opening on June 30, 2000 to March 31, 2002.

Sample Types	2000-01	2001-02	2002-03	Totals
Total Samples Received	6,216	13,137	20,231	39,584
Collection Kits Deployed	55,015	28,407	33,027	116,449
In CODIS (Convicted Offender Index)	4,945	14,881	17,890	37,716
In CODIS (Crime Scene Index)	1,631	3,070	3,843	8,544
Forensic Hits (Offender to Crime Scene)	10	183	452	645
Forensic Hits (Crime Scene to Crime Scene)	5	11	32	48
Conviction Matches	21	254	447	722
Offender Duplicates	25	204	488	717
Different ID's	3	6	5	14
Sample Rejections	71	149	206	426
Non-designated Offences	56	54	126	236

Note: Numbers are subject to change. Numbers provided were the most recent as of March 31, 2003.

Total Samples Received (Currently receiving about 350 - 450 samples per week.)

- Blood - 38,737 Buccal - 780 Hair - 67

Convicted Matches

- Where a new convicted offender sample matches a previous casework sample for which they were convicted.

Different ID's

- Same DNA, different individuals, i.e. twins

Sample Rejections

- 79-biological sample inadequate 80-wrong kit 4-no order 3-fingerprints not suitable
236-non-designated offence 27-other

Non Designated Offences

- Samples not in accordance with legislation

Financial Report 2002-2003

National DNA Data Bank Advisory Committee Annual Costs April 1, 2002 - March 31, 2003

Date of Meeting	Total Expenditure	Total
2002, July 8-9, Ottawa	\$17,035.00	\$50,000
2002 Nov 28-29, Vancouver	\$14,580.00	
2003 February 27-28, Ottawa	\$11,000.00	
Total	\$42,615.00	
Balance	\$ 7,385.00	

Acronyms

A/Commr.	Assistant Commissioner
B&E	Break and Enter
BCA	Biology Casework Analysis
CODIS	Combined DNA Index System
CNPS	Chief National Police Services
CRU	Case Reception Unit
CSI	Crime Scene Index
DB	National DNA Data Bank
DNA	Deoxyribonucleic Acid
DOJ	Department of Justice
ERU	Evidence Recovery Unit
FBI	Federal Bureau of Investigation
FLS	Forensic Laboratory Services
FSS	Forensic Science Service
NJI	National Judicial Institute
NPS	National Police Services
Oi/c	Officer in Charge
RCMP	Royal Canadian Mounted Police
STR	Short Tandem Repeats
STaCS	Sample Tracking and Control System
ULC	Uniform Law Conference

